

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

July 3, 1985

Alice C. Graff
City Attorney
City of Hayward
22300 Foothill Boulevard
Hayward, CA 94541

Re: Your Request for Advice
Our File No. A-85-147

Dear Ms. Graff:

Thank you for your letter dated June 20, 1985, seeking advice pursuant to Government Code Section 83114(b)^{1/} regarding the disclosure of an interest in real property.

FACTS

You are a designated employee under the City of Hayward's Conflict of Interest Code, and you are required to disclose interests in real property located within the City.

To assist a friend in obtaining a loan for the purchase of a condominium located in the City of Hayward, you agreed to become a co-borrower on the loan. The loan balance on the date of sale was \$105,311. Title to the property is in your friend's name and your name as tenants-in-common. You made no financial contribution to the purchase and you have an unrecorded agreement with your friend which gives her the exclusive right to occupy the condominium and stipulates that she will make all payments arising from ownership of the property. Your agreement further provides that when your friend is able to satisfy the lending institution's requirements for being a sole borrower, or at your request, or in five years, whichever occurs first, your friend will cause your name to be removed from the loan and

^{1/} The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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title. In the event your friend predeceases you while your name is on the loan and title, you have agreed to rent out or dispose of the property and give all proceeds of the lease or the sale to your friend's daughter or the guardian of your friend's daughter.

QUESTIONS

You have asked:

- (1) Whether you have a reportable interest in the condominium; and if so,
- (2) What is the value of your reportable interest.

CONCLUSION

You are required to disclose your ownership interest in the condominium. The value of your reportable interest is one-half of the fair market value of the rental property. You are also required to disclose the loan.

DISCUSSION

1. Interest in Condominium.

Section 82033 defines an "interest in real property" as:

... any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is one thousand dollars (\$1,000) or more.... (Emphasis added.)

Because title to the property is in your name as a tenant-in-common, you have a legally recognizable ownership interest in the property. Civil Code Sections 682 and 865. Even though your private agreement with your friend suggests that this is an interest in form only to the two of you, it is our view that this agreement does not negate your legal ownership interest.

However, as you have indicated, your friend has agreed to make all payments and you have agreed to act as a quasi-trustee of the property in the event your friend predeceases you while your name is on the loan and the title. It is not necessary, but you may wish to attach to your "Form 730" a copy of this

Alice C. Graff
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letter or a statement explaining your unrecorded agreement and its effect on your interest in the property.

2. The Loan.

I assume that you are required by the City's Conflict of Interest Code to disclose all sources of income. Income, as defined in Section 82030, includes any outstanding loan which is not used to purchase, refinance the purchase of, or for improvements to, the principal residence of the filer. Accordingly, since you are a co-borrower on the loan, you should disclose the loan on the condominium. When your name is removed from the loan as a co-borrower, you will no longer need to disclose the loan.

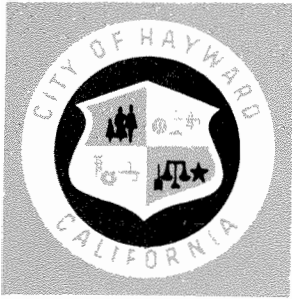
Please feel free to contact this office if you desire additional assistance or if you wish to discuss this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Maura Fishburn", with a long horizontal flourish extending to the right.

Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh



Jun 24 5 20 AM '85

CITY OF HAYWARD • OFFICE OF THE CITY ATTORNEY

June 20, 1985

Barbara Milman, General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Dear Ms. Milman:

I am the City Attorney for the City of Hayward and am a designated employee under the City's Conflict of Interest Code. In addition to other disclosure obligations, I must disclose interests in real property located within the City. I request your formal written advice concerning whether, and if so how, I should disclose the following:

In February of this year a personal friend, whom I have known since we attended junior high school together in New York State, decided to purchase a home. My friend's income was insufficient to meet the lending institution's guidelines for approving the loan. My friend asked me to become a co-borrower on the loan and I did so. The sales price on the condominium, which is located in the City of Hayward, was the loan balance on the date of sale, \$105,311. The monthly loan payments are based upon a variable rate loan; the approximate monthly payment to the principal is \$35.00. Title to the property is in my friend's name and my name as tenants-in-common. I made no financial contribution of any kind to the purchase. My friend and I have an unrecorded agreement concerning this transaction which contains the following provisions: She will make all payments arising from ownership of the home; she has the exclusive right to occupy the home; as soon as her income is sufficient to satisfy the lending institution's criteria for being a sole borrower, when I request her to do so, or in five years, whichever occurs first, she will cause my name to be removed from the loan and the title; and should she predecease me while my name is on the loan and title, I will rent out or dispose of the property and give all proceeds of a lease or a sale to her daughter or, if her daughter is under 18, her daughter's guardian.

Barbara Milman

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June 5, 1985

My questions are:

- (1) Do I have a reportable interest in the home?
- (2) If so, what is the value of my reportable interest?

Very truly yours,

A handwritten signature in cursive script that reads "Alice C. Graff".

ALICE C. GRAFF
City Attorney

ACG:jd

State of California



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Please feel free to contact this office if you desire additional assistance or if you wish to discuss this letter.

Sincerely,


Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh